



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES
AND
ADD CONTRACTOR NAME HERE**

This Contract, by and between the State of Tennessee, Department of Human Services (the "State" or "Department") and Add Contractor Legal Entity Name Here (the "Contractor" or "Approved Child Care Agency"), is for the provision of child care services for recipients of child care assistance, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an: Click to Select One

Contractor Place of Incorporation or Organization: Add Location Here

Contractor Edison Registration ID # Add Number Here

(For new contractors, the Edison Registration number will be available upon enrollment approval; therefore, this field will be completed upon receipt of the number by Child Care Certificate Program staff.)

In consideration of the child care services provided by the Contractor to eligible recipients of Child Care Certificate Program ("CCCP") subsidies and, in consideration of the payments by the Department to the Contractor for such services, the Parties agree as follows:

A. SCOPE

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Vendor Registration. The Contractor shall register as a vendor with the state of Tennessee in order to participate in the Child Care Certificate Program and receive payment from the Department.
- A.3. Department of Education Approval and Assessment Cooperation. The Contractor shall cooperate with any onsite certification procedures and assessments in accordance with Department of Education (DOE) certification processes and Star Quality rating processes.

Failure to comply with this provision shall result in termination of this Contract.
- A.4. Compliance with Child Care and Development Block Grant (CCDBG) Requirements. The Contractor shall comply with all federal requirements and cooperate with any onsite review conducted by the Department of Human Services to monitor compliance of these Requirements.
- A.5. Reports of Child Abuse. The Contractor shall immediately report any reasonable suspicion of child abuse or neglect to the Department of Children's Services (DCS) or law enforcement authorities as required by Tennessee law.
- A.6. Time and Attendance. The Contractor:
 - a. Shall utilize the Child Care Enrollment, Attendance, Verification (EAV) Electronic Reporting process. A Registration Application for the electronic process shall be completed and submitted with the Contract, if the Contractor was not previously enrolled;

- b. Shall enroll in the Child Care Electronic Reporting process unless the State, in its sole discretion, agrees to exempt the Contractor based on information showing that compliance with such process would result in a hardship.
- c. Shall submit attendance reports for enrollments under the Child Care Certificate Program in the manner specified by the Department (See Attachment A for attendance instructions);
- d. Shall submit program schedule/calendar(s) on an annual basis which reflect Department-approved holidays;
- e. Shall report to the Department when a child enrolled in the Child Care Certificate Program is no longer in care, is chronically absent, or changes in circumstances occur which may affect eligibility for care. Failure to notify the Department of such changes may result in termination from the Child Care Certificate Program;
- f. Shall not include absences preceding a child's termination on the attendance report. The Contractor shall include only the child's last day of attendance prior to such absences;
- g. May include on the attendance report two (2) Professional Development days per year. The Contractor, at least thirty (30) days in advance, give written notice to parents and post the specified days that will be used for Professional Development. Documentation of training content and attendance records of staff must be maintained on site for Departmental review;
- h. May include on the attendance report a child's absence for routine illnesses or family needs up to five (5) days per month. For purposes of this provision, "family needs" shall include, but is not limited to: the death of an immediate family member, attendance at a funeral, illness of a parent/guardian, family emergency, or a family vacation;
- i. Shall notify the Department of Human Services local office of a child's chronic absences and, in the event of twenty (20) or more days of continued absences of the child, the Department shall have the right to terminate the child's enrollment from the Program; and
- j. Shall not receive payments for keeping his or her natural, adopted or foster children.
- k. Shall not include holidays on the attendance report when the Contractor's facility is closed unless those holidays are observed by the State.

A.7. Documentation. The Contractor shall maintain documentation of daily attendance, hours and location of each child as required by the Department.

- a. The Contractor shall document attendance by requiring each child to be signed in and out by an authorized person whose name is listed in the child's record. The authorized person shall not be an employee of the Contractor unless such person is the child's legal guardian.
- b. The Contractor understands and agrees that acceptable forms of documentation may include the following, but that the Department may, at its sole discretion, require different or additional form(s) of documentation of a child's daily attendance:

A daily attendance (sign in and out) record of the printed and legal signature of each individual authorized to pick up and/or drop off the child must be maintained. Each child listed must be on separate lines. Parent/guardian and/or signatures of individuals authorized to pick up and/or drop off the child should be located in the child's file. Initials or nicknames are not acceptable as signatures on the attendance sheets/logs. If the Contractor uses an electronic process, the signature, number or code should match the signature of the parent/guardian or approved individual located in the child's file.

- c. Exceptions are allowed for school age children attending before or after care on school campuses. Children who are transported to and from school through the school system's method of transportation and the parent or authorized individual is not available to sign

in/out the child, may have the designated before or after care representative indicate the child was signed into class. Children attending after care programs may have the after-care representative indicate the child was received from the classroom.

- d. The Contractor shall immediately make available upon request by the Department, the Comptroller of the Treasury, or any federal agency any documentation related to any payments made by the State or federal government for the care of children enrolled in the Child Care Certificate Program, up to a period of five (5) years.
- e. The Contractor understands and agrees that such documentation shall be maintained at all times at the location at which child care is provided under this Contract and not at any other location.
- f. The Contractor shall notify the Department immediately upon cessation of its participation in the Child Care Certificate Program or closure of the agency and return to the State all documentation related to payments under this Contract, including all sign in/out documents.
- g. The Contractor further agrees that any failure to maintain such files at such location and to produce all such files immediately when requested by the Department or any other agency of the state or federal government may result in the denial of any and all payments for child care services for any children for whom payments may be or have been requested under this Contract.
- h. The Contractor understands and agrees that the decision of the Department with regard to adequate documentation will be final and understands and agrees that Contractor's remedies are only those that exist under this Contract.

A.8. State Actions Affecting Certification.

- a. If a Contractor's child care certification issued to the Contractor to care for children is suspended and the Contractor is not authorized to provide child care to all, or to any group of children enrolled with Contractor, due to the suspension, all payments for the period of the suspension shall be terminated for any children for whom care can no longer be legally provided because of the suspension.
- b. If the certification is revoked or denied, or the certification is restricted, and is timely appealed, payments shall continue during the period of such appeal, unless the certification is suspended subsequent to the timely filing of an appeal, at which point payments will be terminated in accordance with paragraph A.7.a above until the suspension is dismissed or altered to allow for the care of children by Contractor. If no suspension of the certification occurs subsequent to the timely filing of an appeal, amounts paid to Contractor during the pendency of the appeal of the revocation or denial of a certification shall not be subject to recovery in the event Contractor is not successful on appeal unless such payments may be otherwise determined to have been incorrectly made.
- c. The State, in its sole discretion, may terminate this contract if it determines that there are Legal Enforcement Actions taken by TDHS based on serious deficiencies in health and safety requirements.
- d. The Contractor understands and agrees that any and all decisions affecting payments based on licensing actions made by the Department shall be final.

A.9. CPR Training. The Contractor shall ensure that there is at least one person on staff at all times with Pediatric CPR and child and adult first aid certification.

A.10. Contact Information and Notice of Changes. This Contract is issued to the individual or entity named herein, and is specific to the agency at the location specified in the Contractor's Application. The Contractor shall:

- a. Notify the Department immediately of any change in contact information for the agency (address, phone number, and email address);
- b. Notify the Department immediately of any change in ownership or location for the agency; and
- c. Maintain a current record of the printed name and legal signature of each parent/guardian or individual authorized to pick up and/or drop off children. Initials or nicknames are not acceptable as signatures on the attendance sheets/logs. If the Approved Child Care Agency uses an electronic or digital signature, that information shall also be on file.

B. TERM OF CONTRACT:

This Contract shall be effective when it is approved by the State (the "Effective Date") and shall continue in effect until terminated or modified pursuant to the terms of this Contract, provided the Approved Child Care Agency completes an annual certification renewal on or before July 1 of each year this Contract remains in effect. The State shall have no obligation for goods or services provided by the Contractor which are not performed within the period this Contract is in effect pursuant to the requirements of this Contract and applicable law.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability.

- a. The State's established payment rates, times the number of children for which child care is provided during the Term of this Contract, shall constitute the entire compensation due the Contractor for the service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. Current rates are available at the following link:

http://tn.gov/assets/entities/humanservices/attachments/Provider_Rate_Schedule_10-1-15.pdf

- b. The Contractor shall not be paid the established payment rate for any period under the Contract or any extensions of the Contract for work not requested by the Department. The established rates represent available funds for payment to the Contractor and do not guarantee payment of any such funds to the Contractor under this Contract unless the Department requests work and the Contractor performs the requested work. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The State's established payment rates for child care under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended by the State.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates established and published by the Department. Payment rates shall be reduced to reflect any appropriate parent copayment required. The Contractor understands and agrees that:

- a. Payment rates may be amended by the State at any time;
- b. All payments require a valid certificate issued by the Department for each child for whom payment is requested;
- c. Attendance reports shall be submitted through the EAV Electronic Reporting process;

- d. All payments will be calculated using individual child attendance recorded on the EAV and submitted by the Contractor;
 - e. Attendance reports shall be submitted within forty-five (45) days following the end of the attendance period following the instructions in Attachment A of this contract;
 - f. The Department shall have no payment liability for any child identified on attendance reports submitted more than forty-five (45) days following the end of the attendance period;
 - g. Failure to submit attendance reports to the Department within the prescribed forty-five (45) days may result in termination of this Contract;
 - h. Incomplete attendance reporting for any child, as determined by the Department, shall result in denial of any requests for payment for such child;
 - i. Payment for a child with incomplete attendance reporting is contingent upon the Department receiving accurate attendance documentation for the child within fifteen (15) days of notification by the Department of a payment denial;
 - j. Failure to adhere to the attendance reporting time frames may result in denial of the claim for payment for each child for whom accurate and correct information, as determined by the Department, is not provided;
 - k. Attendance reports submitted prior to the close of business on the last day of the attendance period shall be considered invalid;
 - l. The Department will have no liability to reimburse the Contractor for any underpayment error not brought to the attention of the Department within ninety (90) days after the end of the attendance period in which the error was made;
 - m. Core hour programs funded by other agencies, i.e., Head Start or local School System Pre-K classes, shall be excluded from attendance reports submitted to the Department. Failure to exclude these core program hours from attendance reports may result in termination of this Contract. The Contractor will subtract the core program hours from the extended child care and enter those net hours on the EAV;
 - n. Nothing shall be paid to a Contractor where a parent is in direct supervision of his/her child; and;
 - o. All payments to Contractor under this or any other contract with the State of Tennessee shall be made by Automated Clearing House (ACH).
- C.4. The Contractor agrees it shall be compensated for units of service based upon the payment rates established by the State.
- a. The Department's payment to the Contractor will be the lesser of:
 - i. The maximum state payment rate for that child, or
 - ii. The general public rate the Contractor would charge for that child if it was not participating in the Child Care Certificate Program.
 - b. The Contractor shall provide to parents, in writing, documentation of rates greater than the State payment rates and agrees that any rate charged higher than the State rates are not enforceable without written notice to the parent at the time of enrollment or if Contractor's rates are increased subsequent to the child's enrollment. The Department may require proof of written notice to the parent prior to authorization of payment.

- c. The Contractor shall collect parent or guardian co-pay fees, if applicable, as set by the State and required by federal regulation. The Department assumes no liability for fees that are not paid.
- C.5. Payment and Attendance. The payment made by the State shall not prejudice the State's right to object to or question any attendance documentation or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the child care service provided nor as an approval of any of the attendance documentation submitted by the Contractor.
- C.6. Payment Reductions. The Contractor's payment shall be subject to reduction for amounts received which are determined by the State, on the basis of review or audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct amounts owed to the state of Tennessee from amounts which are or shall become due and payable to the Contractor under this or any other contract between the Contractor and the State of Tennessee.
- C.8. Methods of Collection of Overpayments. Contractor understands and agrees that an "Overpayment" is any payment, whatever the cause that exceeds the amount that is lawfully or otherwise correctly due under the terms of this agreement, or that is not adequately supported by necessary documentation acceptable to the Department.
 - a. The Contractor understands and agrees to the following child care certificate repayment and offset procedures for Overpayments:
 - i. Lump Sum. The Contractor may choose to repay an overpayment in one payment reduction from their next billing period or may choose to repay the full amount of the overpayment by cashier's check made out to the Department of Human Services and mailed or delivered to the Department's Fiscal Services unit.
 - ii. Installments. The Contractor may request approval from the Department to repay any overpayment in installments from a set number of billing periods, not to exceed twelve (12) months. A repayment agreement for this purpose must be signed by the Contractor and approved by the Department.
 - iii. Collection by Legal Action. The Department may pursue legal action for repayment under state law in the absence of an arrangement for voluntary repayment.
 - b. Terminated Contractors/Owners with Debts. In the event that the Contractor is terminated from the Child Care Certificate Program while owing a debt to the State, the Contractor may not re-enroll in such Program unless the Department determines that at least fifty percent (50%) of the total amount owed to the State has been repaid.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as

stated below or any other address provided in writing by a Party.

The State:

Gwen Laaser
Director, Child Care Certificate Program
Department of Human Services
400 Deaderick St., 8th Floor
Citizens Plaza Building
Nashville, TN 37243-1403
Gwen.Laaser@tn.gov
Telephone # (615) 313-3893
FAX # (615) 524-3141

The Contractor:

Approved Child Care Agency Contact Name & Title
Approved Child Care Agency
Address
Email
Telephone # _____-_____-_____
FAX # _____-_____-_____

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter. The Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint ventures, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract

providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors, and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in

Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes: Attachment A – Attendance Instructions; Attachment B – Attestation Regarding Personnel Used in Contract Performance; and Attachment C – Licensed Child Care Agency Acknowledgment;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract

- E.3. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.4. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.5. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.6. Audit and Repayment Requirements.
- a. The Contractor agrees to allow the Department, Comptroller of the Treasury, or any federal agency to perform onsite audit reviews of the Contractor's payments and compliance with the Contractor Contract at any time and agrees that the procedures established in this section and Section C shall govern the review and repayment procedures for questioned costs for Child Care Certificate Program (CCCP) payments.
 - b. The Department will identify and compute any overpayments made by the Department to Contractor. A report of the review and any findings will be sent to Contractor by the Department.
 - c. If the audit report contains overpayments the Contractor must, within fifteen (15) calendar days of the report, make payment arrangements as specified in Section C.8.
 - d. If Contractor does not agree with the findings, it shall provide any additional information and documents that it believes will resolve the findings to the Department within the fifteen (15) calendar day period.
 - e. The Department will review any new or additional information supplied by the Contractor and inform the Contractor of the outcome of the review and possible changes in the questioned costs.
 - f. Failure to resolve the findings and/or set up a repayment for overpayments as specified in Section C.8. shall result in all future payments being withheld until such overpayments are paid in full and may result in termination pursuant to the terms of this Contract and/or legal action.
 - g. If the Contractor is required to submit a Corrective Action Plan detailing a plan of correction to an audit finding and does not within fifteen (15) days, actions may be taken that may result in sanctions or closure of the facility.
- E.7. Survival. The terms, provisions, representations, and warranties contained in Sections D.2, E.2, E.4, and E.6 of this Contract shall survive the completion of performance, termination or expiration of this Contract

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME: Enter Name Here

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF HUMAN SERVICES:

DANIELLE W. BARNES, COMMISSIONER

DATE

ATTENDANCE INSTRUCTIONS

1. The Contractor must record the actual hours attended by each child for each day on the Enrollment Attendance Verification Form (EAV). The Contractor will round any minutes off to the nearest hour.
2. The Contractor will leave the EAV “blank” for a child if it does not expect payment for that child for that day. Blank spaces will be used by a Contractor to indicate:
 - a. The days prior to the start of child care service;
 - b. The days following a child’s termination;
 - c. Days of the week that do not require payment for any reason.
3. The Contractor will enter a “T” on the EAV to indicate the termination of a child from the Contractor’s program. The “T” will be placed in the space for the day after the last day of the child’s attendance.
4. The Contractor will enter an “A” on the EAV to indicate a child was scheduled to attend, but was absent for that day.
5. The Contractor will enter a “C” on the EAV to indicate the Contractor was not open for business on that day. The “C” indicates the agency is closed.
6. The Contractor will enter an “H” on the EAV for Paid State Holidays. – The “H” code indicates the Contractor was closed for an approved state holiday. Holiday pay shall be at the school in rate for school age children.
7. The Contractor will enter an “N” on the EAV when the child is not scheduled to be present, and the Contractor does not expect to be paid, due to a Special Child Schedule. The Certificate Program authorizes a special schedule for specific children when a parent’s activity schedule makes care unnecessary for one (1) to four (4) days per week on a regular basis.
8. The Contractor will enter a “P” on the EAV for Professional Development days.
9. Payment will only be made at the school out rate for a school age child on breaks (when school is closed e.g. Summer, Fall, Winter, Spring breaks, In-Service, Parent/Teacher Conferences) if such child attends full time hours.
10. If a parent/guardian has care and control and also joint custody of the child/ren, the Contractor will be paid as temporary absence for up to the maximum days allowed five (5) days and those days will be considered as family needs to keep this slot open.

ATTACHMENT B



**State of Tennessee
Department of General Services
Central Procurement Office
312 Rosa L. Parks Avenue
William R. Snodgrass TN Tower, 3rd Floor
Nashville, TN 37243-1102
Phone: 615-741-1035 Fax: 615-741-0684**

Attestation Regarding Personnel Used in Contract Performance

Company Name: _____

Company Mailing Address: _____

Contract No: _____

Buyer: _____

Company Contact Name: _____

Telephone Number of Contact: _____

Company Email Address: _____

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

Affirmation: The Contractor acknowledges by signature that all information stated above is true and accurate and is no way misleading.

Authorized Signatory: I, _____ (print name) as a Principal or Officer of the Company, does certify, warrant and assure that I am empowered to contractually bind by the Contractor.

Officers' Signature: _____ Date: _____

Title of Signatory: _____

ACKNOWLEDGMENT

LICENSED CHILD CARE AGENCY

AS THE OWNER OR AUTHORIZED REPRESENTATIVE OF THE LICENSED CHILD CARE AGENCY, I ACKNOWLEDGE THAT:

- 1. I HAVE READ, UNDERSTAND, AND AGREE TO COMPLY WITH ALL TERMS AND CONDITIONS OF THIS CONTRACT;**
- 2. ANY PAYMENTS TO THE CHILD CARE AGENCY MADE IN ERROR OR RESULTING FROM FRAUD CONSTITUTE A DEBT OWED TO THE STATE OF TENNESSEE AND THAT, AS THE LICENSED CHILD CARE AGENCY TO WHOM OR TO WHICH CHILD CARE CERTIFICATE PROGRAM PAYMENTS ARE MADE, I WILL REPAY SUCH DEBT(S), AS AN INDIVIDUAL OR AS AN ENTITY, ACCORDING TO A PAYBACK PLAN WHICH IS SATISFACTORY TO THE DEPARTMENT, ANY CURRENT OR FUTURE OUTSTANDING DEBT TO THE DEPARTMENT OR THE STATE OF TENNESSEE THAT RESULTS FROM OVERPAYMENTS OR FRAUD REGARDING THE CHILD CARE CERTIFICATE PROGRAM.**
- 3. AS THE DULY AUTHORIZED REPRESENTATIVE OR OWNER OF THE CHILD CARE AGENCY, I FURTHER UNDERSTAND AND AGREE THAT ANY CURRENT, FUTURE OR OTHERWISE OUTSTANDING DEBT OR CIVIL PENALTY THAT I OR MY AGENCY, AS AN INDIVIDUAL OR AS AN ENTITY, MAY OWE UNDER THIS OR UNDER ANY ADMINISTRATIVE OR JUDICIAL ORDER OR UNDER ANY PAYMENT, GRANT OR BENEFIT THAT WOULD OTHERWISE BE DUE TO THE CHILD CARE AGENCY, MAY BE OFFSET BY THE DEPARTMENT OR ANY AGENCY OF THE STATE OF TENNESSEE FOR ANY SUCH DEBTS OR CIVIL PENALTIES FROM PAYMENTS OTHERWISE DUE, EXCEPT AS OTHERWISE SPECIFICALLY PROHIBITED BY LAW; AND.**
- 4. I ACKNOWLEDGE THAT I HAVE BEEN GIVEN A COPY OF THIS CONTRACT.**

SIGNATURE

PRINTED NAME OF OWNER OR AUTHORIZED REPRESENTATIVE

DATE